

INSURANCE DIVISION[191]

Adopted and Filed

Rule making related to agency procedure and organization

The Insurance Division hereby rescinds Chapter 1, “Organization of Division,” and adopts new Chapter 1, “Administration”; rescinds Chapter 2, “Declaratory Orders,” and adopts new Chapter 2, “Public Records and Fair Information Practices”; amends Chapter 3, “Contested Cases”; rescinds Chapter 4, “Agency Procedure for Rule Making and Waiver of Rules,” and adopts new Chapter 4, “Agency Procedure for Rule Making, Waiver of Rules, and Declaratory Orders”; and amends Chapter 10, “Insurance Producer Licenses and Limited Licenses,” Chapter 36, “Individual Accident and Health—Minimum Standards and Rate Hearings,” Chapter 39, “Long-Term Care Insurance,” Chapter 41, “Limited Service Organizations,” Chapter 55, “Licensing of Public Adjusters,” Chapter 58, “Third-Party Administrators,” and Chapter 76, “External Review,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 17A.3, 17A.7, 17A.9, 17A.9A, 22.11, 502.601 and 502.605 and chapter 505.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A, 22, 502 and 505.

Purpose and Summary

The rescission of existing Chapters 1, 2, and 4 and adoption of new Chapters 1, 2, and 4 update the Division’s rules to add and clarify statutory requirements as well as streamline the chapters to eliminate rules that are duplicative of statute.

The amendments to Chapters 3, 10, 36, 39, 41, 55, 58, and 76 update the address, the website, and several out-of-date email addresses for the Division.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 25, 2019, as **ARC 4660C**. A public hearing was held on October 21, 2019, at 10 a.m. at the Division’s offices, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa. One person attended the public hearing and provided a comment regarding the process to request confidential information detailed in rule 191—2.6(17A,22). No other comments were received.

In response to the comment, the Division has modified rule 191—2.6(17A,22) regarding the request for confidential treatment to be more similar to the agency uniform rules. The Division has also modified this rule to clarify when the Division may disclose to the public information that was not requested to be confidential. In rule 191—1.4(502,505), the Division’s address has been corrected.

Adoption of Rule Making

This rule making was adopted by Douglas M. Ommen, Iowa Insurance Commissioner, on October 30, 2019.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

These rules do not include a provision for the waiver of a rule because the Division's general waiver rules of 191—Chapter 4 apply.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on December 25, 2019.

The following rule-making actions are adopted:

ITEM 1. Rescind 191—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1 ADMINISTRATION

191—1.1(502,505) Definitions. For rules of the insurance division, the following definitions apply:

“*Commissioner*” means the commissioner of insurance or the commissioner's designee.

“*Division*” means the Iowa insurance division.

“*Division's website*” means the information and related content found at iid.iowa.gov.

191—1.2(502,505) Mission. The division protects consumers through consumer education and enforcement while effectively and efficiently providing a fair, flexible, and positive regulatory environment.

191—1.3(502,505) General course and method of operations. The division is the state regulator which supervises all insurance business transacted in the state of Iowa as well as securities and other regulated industries.

191—1.4(502,505) Contact information and business hours. The division's office and mailing address is Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309-3738. The general telephone number for the division is 515-281-5705 or 1-877-955-1212. The division's facsimile number is 515-281-3059. The division's website address is iid.iowa.gov. The division's hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

191—1.5(502,505) Information, forms, and requests. Information, applications, and forms may be obtained from the division's website, in person at the division's offices, or by telephone using the division's general telephone number. Specific instructions, forms and guidance may be provided in administrative rules or on the division's website. Submissions and requests can be submitted through the division's website, in person, or by telephone.

191—1.6(502,505) Organization. The division is headed by the commissioner, who is assisted by a first deputy commissioner, a second deputy commissioner, a deputy commissioner for supervision, and other deputy commissioners and assistant commissioners. The functions of the division are divided into eight bureaus.

1.6(1) *Administrative bureau.* The administrative bureau provides staff support to the commissioner and the division and is responsible for budget, personnel, procurement, communication, legislative, and other services.

1.6(2) *Company regulation bureau.* The company regulation bureau is responsible for the following:

a. Regulating domestic and foreign insurance companies licensed in Iowa, through licensure, analysis and financial and market examinations.

b. Examining the financial condition of domestic insurance companies not less than once every five years. Foreign companies are examined as deemed appropriate. The bureau ensures compliance with National Association of Insurance Commissioners accreditation mandates and with financial examination and analysis standards.

c. Serving as a general insurance information repository and resource for both insurers and consumers regarding, for example, insurance companies' statuses, addresses, telephone numbers, certifications, and financial statements; statutory construction; life and health insurance guaranty association fund calculations; compilation of statistics; and publication of the division's annual report to the governor required by Iowa Code section 505.12.

d. Reviewing and approving filed company transactions, including but not limited to approval of acquisitions and mergers of domestic insurers, intercompany contractual agreements and assumption reinsurance agreements.

e. Authorizing and overseeing individual and group workers' compensation self-insurance.

f. Authorizing, examining and analyzing benevolent associations and fraternal benefit societies.

g. Authorizing and reviewing multiple employer welfare arrangements.

h. Registering and verifying compliance for risk retention groups.

i. Supervising the rehabilitation and liquidation of insurance companies.

j. Auditing and monitoring premium tax remittances for admitted companies and supervising statutory deposits.

k. Reviewing and approving admission applications for foreign surplus lines insurers as well as conducting premium tax audits associated with the nonadmitted insurance industry.

l. Implementing and maintaining the division's information technology resources.

1.6(3) *Securities and regulated industries bureau.* The securities and regulated industries bureau is responsible for administering and enforcing the Iowa uniform securities Act through enforcement, licensing, and securities registration to ensure investor protection and a positive climate for capital formation. The bureau is also responsible for protecting the public by administering and enforcing rules related to motor vehicle service contracts, residential service contracts, retirement facilities, cemeteries, and preneed purchase agreements for cemetery merchandise, funeral merchandise and funeral services.

1.6(4) *Consumer advocate bureau.* The consumer advocate bureau consists of the consumer advocate and, in addition to being responsible for the duties described in Iowa Code section 505.8(6) "b," is responsible for providing outreach to consumers, assisting in creation of consumer protection laws and regulations, and reviewing complaints. In order to fulfill the prescribed duties, the commissioner has delegated investigation and enforcement duties to the market regulation, enforcement, and fraud bureaus.

1.6(5) *Market regulation bureau.* The market regulation bureau is responsible for the following:

a. Ensuring fair treatment of consumers.

b. Investigating unfair or deceptive trade practices in the business of insurance.

c. Reviewing, investigating and responding to inquiries and complaints from the public regarding insurance producers and insurers.

d. When requested by consumers, coordinating external reviews of health insurance claim decisions if insurance companies deny benefits either on the basis that the services were not medically necessary or on the basis that the services were investigational or experimental.

e. When requested by consumers, coordinating independent reviews of long-term care insurance claim decisions if insurance companies deny benefits on the basis that insureds did not meet benefit trigger requirements.

1.6(6) Enforcement bureau. The enforcement bureau takes administrative action against individuals and entities regulated by the division for violations of insurance, securities, and other laws under the authority of the division and provides legal counsel to the division.

1.6(7) Fraud bureau. The fraud bureau confronts the problem of insurance and securities fraud by prevention, investigation, and prosecution of fraudulent insurance acts in an effort to reduce the amount of premium dollars used to pay fraudulent insurance claims, as set forth in Iowa Code chapter 507E. Matters investigated by the fraud bureau may be referred to the attorney general's office or to local prosecutors for potential action or prosecution.

1.6(8) Product and producer regulation bureau. The product and producer regulation bureau is responsible for the following:

a. Reviewing, approving or disapproving property, casualty, life and health forms and, where provided by law, premium rates of certain types of insurance.

b. Performing actuarial analysis of life and health insurance plans funded by certain public bodies.

c. Licensing, registering, and monitoring entities and individuals under the authority of the commissioner.

d. Overseeing the senior health insurance information program (SHIIP) and senior Medicare patrol (SMP). SHIIP's mission is to advocate for, inform, educate and assist consumers on Medicare and related health insurance information issues so Iowans can make informed decisions and access resources to address their needs. SMP seeks to increase public awareness on how to prevent, detect, and report health care fraud, errors and abuse through grassroots education and community engagement. Iowa SHIIP-SMP services are local, carried out by a statewide network of certified, trained volunteer counselors located at sponsor site offices across Iowa. Iowa SHIIP-SMP volunteers provide one-to-one Medicare counseling and conduct community education on Medicare and fraud prevention. The Administration for Community Living (ACL), Office of Healthcare Information and Counseling, manages the competitively obtained Iowa SHIIP and SMP grants. ACL is a part of the U.S. Department of Health and Human Services.

191—1.7(505) Service of process. Certain individuals and entities under the jurisdiction of the commissioner are required by law to consent to having the commissioner serve as agent for the individual or entity for the purpose of receiving service of process.

1.7(1) Request for service. A party to a proceeding who requests that the commissioner accept service of process as allowed by law must submit to the division, at the address stated in rule 191—1.4(502,505), all of the following:

a. For each individual or entity to be served, one original and one copy of the documents to be served by the division.

b. A cover letter indicating the name of each individual or entity to be served by the division.

c. A check for service fees, made payable to Iowa Insurance Division, for \$50 for each individual or entity to be served, unless another amount is required by law.

1.7(2) Division actions. After the division receives the items listed in paragraph 1.7(1)“a,” the division must do the following:

a. Accept the service of process on behalf of the individual or entity.

b. Forward, by certified mail, the original documents to the individual or entity to be served.

c. File a notice of acceptance electronically through the Iowa court electronic filing system.

1.7(3) Types of documents the division will serve.

a. The division will serve documents related to the initiation of a case, such as original notices, petitions, and jury demands. The division will not serve documents related to later processes in a case, including but not limited to subpoenas and garnishments, unless required to do so by law.

b. The division will serve documents related to matters in the Iowa court system. The division will not serve documents related to matters in other courts, including but not limited to the federal court

system, or matters in other administrative systems, except for workers' compensation cases filed with the Iowa division of workers' compensation.

These rules are intended to implement Iowa Code sections 17A.3, 502.601, 502.605, 505.1 and 505.30.

ITEM 2. Rescind 191—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

191—2.1(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound division determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This division is committed to the policies set forth in Iowa Code chapter 22. Division staff will cooperate with members of the public in implementing the provisions of that chapter.

191—2.2(17A,22) Definitions. The definitions in Iowa Code section 22.1 are incorporated into this chapter by this reference. In addition to the definitions in rule 191—1.1(502,505), the following definitions apply:

“Confidential record” means a record that is not available as a matter of right for inspection and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the division is prohibited by law from making available for inspection by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provisions of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Division” means the insurance division of the department of commerce, created by Iowa Code section 505.1. The division is both the “government body” and the “lawful custodian” as defined in Iowa Code sections 22.1(1) and 22.1(2). The division is also the “state agency” as defined in Iowa Code chapter 17A and referenced in Iowa Code chapter 22. For purposes of this chapter, “division” includes both the commissioner of insurance and the administrator as defined in Iowa Code chapter 502.

“File,” “filed,” or “filing,” when used as a verb, means submitting or having submitted to the division a record or information. “File” or “filing,” when used as a noun, means a record or information.

“Inspect” or “inspection” means the same as “examine” or “examination” in Iowa Code chapter 22. The term “examination” in this chapter does not mean the same as “examination” as used in Iowa Code chapter 22.

“Lawful custodian,” as used in Iowa Code section 22.1(2), is the division, the division’s record officer, or an employee lawfully delegated authority by the division to act for the division in implementing Iowa Code chapter 22.

“Open record” means a record other than a confidential record.

“Personally identifiable information” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“Record” means all or part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the division.

“Record system” means any group of records under the control of the division from which a record may be retrieved by a personal identifier such as the name of the individual, number, symbol or other unique retriever assigned to the individual.

191—2.3(17A,22) General provisions.

2.3(1) Entities holding division records covered by this rule. This rule applies to records belonging to, required by, or created by the division. This rule applies to records held by third parties, including other state agencies, that do any of the following:

- a. Perform division functions on behalf of the division;
- b. Store records for the division;
- c. Perform services for the division; or
- d. Otherwise handle records that would be governed by this rule if they were in the possession of the division.

2.3(2) Existing records. A request for access shall apply only to records that exist at the time the request is made and access is provided. The division is not required to create, compile or procure a record solely for the purpose of making it available except as described in Iowa Code section 22.3A and subrule 2.4(6).

2.3(3) Public records. All of the division's records are open records available to the public except for records that are confidential under rule 191—2.12(17A,22) or redactable under rule 191—2.11(17A,22).

2.3(4) Availability of open records. Open records of the division are available to the public for examination and copying unless otherwise provided by state or federal law, regulation or rule.

2.3(5) Internet access. The division provides public access to many public records, with no request for access necessary, on the division's website.

2.3(6) Office hours. Open records are available for inspection during customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

2.3(7) Data processing system. Some agency data processing systems that have common data elements can match, collate and compare personally identifiable information.

2.3(8) Scope. This chapter does not:

- a. Require the division to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
- b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
- c. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the division which are governed by the regulations of another agency.
- d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.
- e. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, the Code of Professional Responsibility, and applicable regulations.
- f. Make any warranty of the accuracy or completeness of a record.

191—2.4(17A,22) Requests for access to records.

2.4(1) Request for access. Requests for access to open records not available on the division's website may be made in writing or in person. A request may be made by mail, email, or online as instructed on the division's website. Requests must identify the particular records sought by name or description in order to facilitate the location of the record. Requests must include the name, address, email address if available, and telephone number of the person requesting the information. A person is not required to give a reason for requesting an open record. If the division has records in its possession that may be public records but that are copies of materials from another agency or public organization, the division may refer persons seeking inspection of those records to the originating agency or public organization.

2.4(2) Response to requests.

a. *Access.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the division must comply with the request as soon as feasible. The division requests that members of the public make appointments for the in-person inspection of public records because the division needs time to locate stored records and office space is limited.

b. *Delay.* Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4), for redaction by the division of confidential information, or for search

and review of requested records. The division must promptly give written notice to the requester of the reason for any delay and an estimate of the length of that delay.

c. *Deny.* The division may deny access to the record by members of the public when warranted under Iowa Code chapter 22 or other applicable law or when the record's disclosure is prohibited by a court order.

2.4(3) *Security of record.* No person may, without permission from the division, search or remove any record from division files. Inspection and copying of division records must be supervised by the division or a designee of the division in order for the records to be protected from damage and disorganization.

2.4(4) *Copying.* A reasonable number of copies of an open record may be made in the division's office. If photocopy equipment is not available in the division office where an open record is kept, the division must permit the record's inspection in that office and arrange to have copies promptly made elsewhere.

2.4(5) *Fees.* The division may charge fees for records as authorized by Iowa Code section 22.3 or another provision of law. Under Iowa Code section 22.3, the fee for the copying service, whether electronic or hard copy, or mailing shall not exceed the cost of providing the service. An hourly fee may be charged for actual division expenses in the inspection, reviewing, and copying of requested records when the total staff time dedicated to fulfilling the request requires an excess of two hours. When the open records request will cause time required in excess of the allotted two hours, the division may require a requester to make an advance payment to cover all of the estimated fee.

2.4(6) *Information released.* If a person is provided access to less than an entire record, the division shall take measures to ensure that the person is furnished only the information that is to be released. This may be done by providing to the person either an extraction of the information to be released or a copy of the record from which the information not to be released has been otherwise redacted.

191—2.5(17A,22) Access to confidential records.

2.5(1) *Procedure.* The following provisions are in addition to those specified in rule 191—2.4(17A,22) and are minimum requirements. A statute or another administrative rule may impose additional requirements for access to certain classes of confidential records. A confidential record may, due to its nature or the way it is compiled or stored, contain a mixture of confidential and nonconfidential information. The division shall not refuse to release the nonconfidential information simply because of the manner in which the record is compiled or stored.

a. *Form of request.* The division shall ensure that there is sufficient information to provide reasonable assurance that access to a confidential record may be granted. Therefore, the division may require the requester to:

- (1) Submit the request in writing.
- (2) Provide proof of identity and authority to secure access to the record.
- (3) Sign a certified statement or affidavit listing the specific reasons justifying access to the record and provide any proof necessary to establish relevant facts.

b. *Response to request.* The division must notify the requester of approval or denial of the request for access. The notice must include:

- (1) The name and title or position of the person responding on behalf of the division; and
- (2) A brief statement of the grounds for denial, including a citation to the applicable statute or other provision of law.

c. *Request granted.* When the division grants a request for access to a confidential record to a particular person, the division must notify that person and indicate any lawful restrictions imposed by the division on that person's inspection and copying of the record.

d. *Reconsideration of denial.* A requester whose request is denied by the division may apply to the commissioner of insurance for reconsideration of the request.

2.5(2) *Release of confidential records by the division.* The division may release a confidential record or a portion of it to:

- a. The legislative services agency pursuant to Iowa Code section 2A.3.

- b. The ombudsman pursuant to Iowa Code section 2C.9.
- c. Other governmental officials and employees only as needed to enable them to discharge their duties.

d. The public information board pursuant to Iowa Code section 23.6.

2.5(3) Release of confidential records by the division.

a. The division may release a confidential record or a portion of it to a person not covered in rule 191—2.6(17A,22) if the release:

- (1) Is permitted by statute, rule or another provision of law; and
- (2) Is not inconsistent with the stated or implied purpose of the law which establishes or authorizes confidentiality.

b. Before the division releases a record to a person not covered in rule 191—2.6(17A,22), the division may notify the subject of the record of the impending release and may give the subject a reasonable amount of time to seek an injunction.

191—2.6(17A,22) Requests for confidential treatment. The division may treat a record as a confidential record and withhold it from inspection or refuse to disclose that record to members of the public only to the extent that the division is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order.

2.6(1) Request. A person may request that all or a portion of a record be confidential. The request for confidential treatment must be submitted in writing to the division and:

- a. Identify the information for which confidential treatment is sought.
- b. Cite the legal and factual basis that justifies confidential treatment.
- c. Identify the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.
- d. Specify the precise period of time for which the confidential treatment is requested should the request be only for a limited time period.

2.6(2) Additional information. The division may request additional factual information from the person to justify treatment of the record as a confidential record.

2.6(3) Decision. The division must notify the requester in writing of the granting or denial of the request and, if the request is denied, the reasoning for the denial.

2.6(4) Request denied. If the request for confidential treatment of a record is denied, the requester may apply to the commissioner for reconsideration of the request. However, the record shall not be withheld from public inspection for any period of time if the division determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record.

2.6(5) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the division from treating it as a confidential record. However, if a person who has submitted information to the division does not request that it be withheld from public inspection, the division may proceed as if that person has no objection to its disclosure to members of the public.

191—2.7(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, the person who is the subject of a record may have a written statement of additions, dissents or objections entered into that record. The statement shall be filed with the division. The statement must be dated and signed by the person who is the subject of the record and include the person's current address and telephone number. This rule does not authorize the person who is the subject of the record to alter the original record or to expand the official record of any division proceeding.

191—2.8(17A,22) Disclosures without the consent of the subject.

2.8(1) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject.

2.8(2) Authority to release confidential records. The division may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any

person may request permission to inspect these records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 191—2.6(17A,22). If the division initially determines that it will release such records, the division may notify interested persons and withhold the records from inspection as provided in rules 191—2.6(17A,22) and 191—2.7(17A,22).

191—2.9(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, the subject of a confidential record may consent to have a copy of the portion of that record that concerns the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed and the particular person or class of persons to whom the record may be disclosed. The subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity. Appearance of counsel before the division on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the division to disclose records about that person to the person's attorney.

191—2.10(17A,22) Notice to suppliers of information. When the division requests a person to supply information about that person, the division must notify the person of the use that will be made of the information, which persons outside the division might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

191—2.11(17A,22) Personally identifiable information collected by the division. The division collects and maintains open records, some of which may contain personally identifiable information, and some of which may be shared with other state or federal agencies or organizations or vendors. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the division. Unless otherwise stated, the authority for the collection of the record is provided by Iowa Code chapter 502 or 505. Some personally identifiable information is protected by Iowa Code sections 502.607(2) "e" and 505.8(9).

2.11(1) Nature and extent. The following records may contain personally identifiable information:

a. Confidential records. Records listed as confidential records are described in rule 191—2.12(17A,22).

b. Rule-making records. Rule-making records may contain information about people who make written or oral comments about proposed rules.

c. Contested case records. Contested case records contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a contested case are contained in contested case records.

d. Licensing records. Licensing records of individuals and entities regulated by the division contain names and identifying numbers of the regulated individual or individuals designated as responsible for the regulated entity.

e. Complaint, inquiry, investigation, and examination records. Complaint, inquiry, investigation, and examination records contain names and identifying numbers of the people who submit, are the subject of, or are otherwise involved in the complaint, inquiry, investigation or examination.

f. Personnel files. The division maintains files containing information about employees of the division and applicants for positions with the division. The files contain payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.

2.11(2) *Redaction.* To the extent that the division finds it necessary to allow inspection of records containing personally identifiable information, the division must, when allowed by law, redact the personally identifiable information prior to allowing the inspection.

2.11(3) *Means of storage.* Paper and various electronic means of storage are used to store records containing personally identifiable information. Some information is stored electronically by third parties on behalf of the division.

191—2.12(17A,22) Confidential records. This rule describes the types of agency information or records that are confidential. This rule is not exhaustive. The following records shall be kept confidential. Records are listed by category and include a citation to the legal basis for withholding that category from public inspection.

2.12(1) Records which are exempt from disclosure under Iowa Code section 22.7.

2.12(2) Records which constitute attorney work product, or attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

2.12(3) Those portions of the division's staff manuals, instructions or other statements issued by the division which set forth criteria or guidelines to be used by division staff in auditing, making inspections, settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when the disclosure of such statements would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the division, pursuant to Iowa Code sections 17A.2 and 17A.3.

2.12(4) All information obtained and prepared in the course of an inquiry, complaint, or investigation, including but not limited to communications, insurer documents, data, reports, analysis, and notes, pursuant to Iowa Code section 505.8 and chapters 502, 502A, 505, 507A, 507E, 522B, 523C, and 523I.

2.12(5) Information of insurers designated as confidential by applicable law, including but not limited to information and reports that are part of an examination, pursuant to Iowa Code sections 505.17 and 507.14.

2.12(6) Information of the Iowa life and health guaranty association, pursuant to Iowa Code chapters 508C and 515B.

2.12(7) Insurance holding company systems registration and holding company examinations, pursuant to Iowa Code section 522.7.

2.12(8) Information related to the uniform securities Act that is designated nonpublic pursuant to Iowa Code section 502.607.

2.12(9) Information filed with the division related to preneed sellers and sales agents of cemetery and funeral merchandise and funeral services pursuant to Iowa Code chapter 523A.

2.12(10) Information obtained in the course of an examination of a cemetery pursuant to Iowa Code chapter 523I.

2.12(11) All records relating to prearranged funeral contracts, except upon approval by the commissioner of insurance or the attorney general, pursuant to Iowa Code section 523A.204(3).

2.12(12) Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "e."

2.12(13) Sealed bids received prior to the time set for public opening of bids, pursuant to Iowa Code section 72.3.

2.12(14) Information related to external review of health care coverage decisions, pursuant to Iowa Code chapter 514J.

2.12(15) Information related to automobile insurance cancellation, pursuant to Iowa Code chapter 515D.

2.12(16) Determination of any suspension of an insurance producer's or other licensee's pending application for licensure, pending request for renewal, or current license, when the suspension is related to failure to pay child support, foster care, or state debt, pursuant to rule 191—10.21(252J) or 191—10.23(82GA,SF2428). Notwithstanding any statutory confidentiality provision, the division may share information with the child support recovery unit or the centralized collection unit of the department of revenue, through manual or automated means, for the sole purpose of identifying registrants, applicants or licensees subject to enforcement under Iowa Code chapter 252J or 272D, respectively.

2.12(17) Information which is confidential under the law governing a person providing information to the division and pursuant to a written sharing agreement referencing that law and how it applies to allow the division to share the information.

2.12(18) All other information or records that by law are or may be confidential.

These rules are intended to implement Iowa Code section 22.11.

ITEM 3. Amend rule 191—3.4(17A), introductory paragraph, as follows:

191—3.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question. The request shall be filed with the insurance division, at the address disclosed in rule ~~191—1.2(502,505)~~ 191—1.4(502,505).

ITEM 4. Amend subrule 3.12(5) as follows:

3.12(5) Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Insurance Division at the address disclosed in ~~191—1.2(502,505)~~ 191—1.4(502,505) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

ITEM 5. Rescind 191—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4

AGENCY PROCEDURE FOR RULE MAKING, WAIVER OF RULES, AND DECLARATORY ORDERS

DIVISION I

AGENCY PROCEDURE FOR RULE MAKING

191—4.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules proposed or adopted by the division are subject to the provisions of Iowa Code chapter 17A and the provisions of this chapter.

191—4.2(17A) Definitions. The definitions in Iowa Code section 17A.2 are incorporated into this chapter by this reference. In addition to those definitions and the definitions in rule 191—1.1(502,505), the following definitions apply:

“*Commissioner*” means the commissioner of insurance or the commissioner’s designee. For the purposes of this chapter, “commissioner” includes both the commissioner of insurance and the administrator as defined in Iowa Code chapter 502.

“*Waiver*” means action by the division that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “variance” as used in Iowa Code chapter 17A is included in this definition of “waiver” for purposes of this chapter.

191—4.3(17A) Severability. If any provision of any rule adopted by the division, or if the application of any such rule to any person or circumstance, is for any reason held to be invalid, illegal or unenforceable by any court of law, the validity, legality and enforceability of the remainder of the rule and its application to other persons or circumstances shall not be affected or impaired thereby.

191—4.4(17A) Public rule-making docket. The division shall maintain on the division’s website a current public rule-making docket listing each pending rule-making proceeding and relevant rule-making information, including the information required by Iowa Code sections 17A.3(1) “d” and 17A.6A(2). If a rule-making docket for all agencies is maintained on the Iowa legislature’s website, the division may utilize the legislature’s docket, in whole or in part, instead of creating a duplicative separate docket.

191—4.5(17A) Rule making.

4.5(1) Notice of proposed rule making. The division must publish a Notice of Intended Action in the Iowa Administrative Bulletin prior to the adoption of a rule unless otherwise authorized by Iowa Code section 17A.4(3). The Notice of Intended Action must include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. The methods that persons and agencies may use to present their views on the proposed rule; and
- e. Any other information required by statute or rule.

4.5(2) Public participation.

a. With regard to proposed rules published under Notice of Intended Action, the division must receive and consider, from any person or agency, written comments and written requests to make an oral presentation when the comments and requests are prepared and submitted in conformance with the following:

(1) Comments and requests must clearly state the name, address and telephone number of the person or agency authoring the comment or request and the number and title of the proposed rule as given in the Notice of Intended Action.

(2) If an oral presentation is requested, the requester is encouraged to set forth the general subject of the presentation.

(3) Comments and requests must be submitted as specified in the Notice of Intended Action and received no later than the date specified in the Notice. The specified date must be no less than 20 days after publication of the Notice.

b. The receipt and acceptance for consideration of written comments and written requests must be promptly acknowledged by the division.

(1) Written comments received after the deadline may be accepted by the division although their consideration is not assured.

(2) Written requests to make an oral presentation received after the deadline will not be accepted.

c. In addition to the formal procedures contained in this rule, the division may solicit viewpoints or advice concerning proposed rules through informal conferences or consultations as the division may deem desirable.

4.5(3) Regulatory analysis. A request for the issuance of regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the division at the address in rule 191—1.4(502,505) or as instructed on the division’s website.

4.5(4) Concise statement. The division must issue a concise statement of the principal reasons for and against a rule that has been adopted if the statement is requested in accordance with this subrule.

a. The request for a concise statement must:

(1) Clearly state the name, address and telephone number of the person or agency authoring the request and the number and title of the rule which is the subject of the request.

(2) Be submitted in writing to the division at the address set forth in rule 191—1.4(502,505) or as instructed on the division’s website and be postmarked no later than 30 days after publication in the Iowa Administrative Bulletin of the rule that is the subject of the request for a concise statement.

b. The concise statement issued by the division in response to the request must include the following:

(1) The principal reasons for adopting the rule;

(2) An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change; and

(3) The principal reasons urged in the rule-making proceeding for and against the rule, and the division’s reasons for overruling the arguments made against the rule.

c. A requested concise statement must be issued either at the time of rule adoption or within 35 days after the division receives the request.

4.5(5) Registration for copies of Notices of Intended Action. Any person, entity, small business, or trade or occupational association may register its name and address with the agency to receive copies of Notices of Intended Action.

a. The request must be in writing, specify whether the requester wants to receive insurance rules, securities rules, or both, and specify the number of copies of the Notice of Intended Action the requester wishes to receive.

b. The requester must reimburse the division for the actual costs incurred in providing copies.

c. The division must promptly acknowledge the receipt of the request.

4.5(6) Records. The division must maintain public rule-making documents and other public records related to rule making in an accessible format for public inspection.

191—4.6(17A) Differences between adopted rule and rule proposed in Notice of Intended Action. The division shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action upon which the adopted rule is based unless the differences are within the scope of the subject matter announced in the Notice of Intended Action, are in character with the issues raised in that Notice, and are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto.

191—4.7(17A) Petition for rule making.

4.7(1) Any person or agency may file a petition for rule making with the division at the address disclosed in rule 191—1.4(502,505) or as instructed on the division’s website. A petition is deemed filed when it is received. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose.

4.7(2) The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA INSURANCE COMMISSIONER	
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (State subject matter).	} PETITION FOR RULE MAKING

4.7(3) The petition shall provide the following information in separate numbered paragraphs:

1. The petitioner’s name, address, and telephone number.

2. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend

or repeal a rule, a citation to the particular portion or portions of the rule proposed to be amended or repealed.

3. A citation to any law deemed relevant to the division's authority to take the action urged or to the desirability of that action.

4. A brief summary of the petitioner's arguments in support of the action urged in the petition.

5. A brief summary of any data supporting the action urged in the petition.

6. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

7. If desired, a request to meet informally with the division to discuss the petition.

4.7(4) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, email address if available, and telephone number of the petitioner and the petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

4.7(5) The division may deny a petition because it does not substantially conform to the required form.

4.7(6) The petitioner may submit a brief in support of the action urged in the petition. The division may request a brief from the petitioner or from any other person concerning the substance of the petition.

4.7(7) Upon request by the petitioner in the petition, the division must schedule a brief and informal meeting between the petitioner and the division or a member of the division's staff to discuss the petition. The division may request the petitioner to submit additional information or argument concerning the petition.

4.7(8) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the division must, in writing, deny the petition, and notify the petitioner of its action and the specific grounds for the denial, or grant the petition and notify the petitioner that it has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to the petitioner.

The rules in this division are intended to implement Iowa Code section 17A.7.

191—4.8 to 4.20 Reserved.

DIVISION II WAIVER AND VARIANCE OF RULES

191—4.21(17A) Waivers.

4.21(1) *Scope.* Division II of this chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the division in situations when no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede the rules in this division with respect to any waiver from that rule. Division II of this chapter shall not preclude the division from granting waivers in other contexts or on the basis of other standards if a statute or agency rule authorizes the division to do so and the division deems it appropriate to do so.

4.21(2) *Authority to grant waivers.* The division may grant a waiver from a rule only if the division has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The division may not waive the following categories of rules:

- a. Rules setting requirements that are created or duties that are imposed by statute.
- b. Rules that provide definitions or interpretations, set fees, clarify enforcement authority, deal with fraud or are the subject of prosecutorial discretion.
- c. Rules that merely define the meaning of a statute or other provision of law or precedent if the commissioner does not possess delegated authority to bind the courts to any extent with the commissioner's definition.

4.21(3) Criteria for order for waiver. In response to a petition completed pursuant to rule 191—4.22(17A), except for a petition seeking a waiver order issued pursuant to subrule 4.21(4), the division may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the division finds, based on clear and convincing evidence, all of the following:

- a. Application of the rule would impose an undue hardship on the person for whom the waiver is requested;
- b. Waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- c. Provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and
- e. If the rule implements Iowa Code chapter 502 or is being applied in conjunction with implementation of Iowa Code chapter 502, the waiver is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes fairly intended by the policy and provisions of Iowa Code chapter 502.

4.21(4) Criteria for waiver related to approval of a manner of electronic delivery of notices of cancellation, nonrenewal or termination. This subrule is intended to implement Iowa Code sections 17A.9A and 505B.1.

a. For purposes of Iowa Code chapter 505B and this subrule, in addition to the definitions in rule 191—4.2(17A), the following definitions shall apply:

“Intended recipient” means the person to whom notice is required to be delivered, including but not limited to notices listed in the definition of “notice of cancellation, nonrenewal or termination” in this paragraph and in 191—paragraphs 20.80(1) “b,” 30.9(1) “b,” 35.9(1) “b,” 39.33(1) “b,” and 40.26(1) “b.”

“Notice of cancellation, nonrenewal or termination” means:

1. Notice of an insurance company’s termination of an insurance policy at the end of a term or before the termination date;
2. Notice of an insurance company’s decision or intention not to renew a policy; and
3. For purposes of notices required by Iowa Code chapters 505B, 508, 509B, 513B, 514, 514B, 514D, 514G, 515, 515D, 518, 518A and 519, includes but is not limited to the following:
 - An insurance company’s notice of cancellation, nonrenewal, suspension, exclusion, intention not to renew, failure to renew, termination, replacement, rescission, forfeiture or lapse in an annuity policy, a life insurance policy, a long-term care insurance policy, or an insurance policy other than life;
 - An insurance company’s rescission or discontinuance of an accident and health insurance policy;
 - An insurance company’s notice of cancellation of personal lines policies or contracts;
 - A health maintenance organization’s notice to an enrollee of cancellation or rescission of membership;
 - An employer’s or group policyholder’s notice to an employee or member of the termination or substantial modification of the continuation of an employer group accident or health policy; or
 - A carrier’s advance notice to affected small employers, participants, and beneficiaries of its decision to discontinue offering a particular type of health insurance coverage.

b. This subrule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance in Iowa, health maintenance organizations, employers, group policyholders, or carriers and to all requirements by statute or rule related to notices of cancellation, nonrenewal or termination. This subrule shall apply when an insurance company, health maintenance organization, employer, group policyholder, or carrier seeks the commissioner’s approval of a manner for delivering by electronic means required notices of cancellation, nonrenewal or termination, as described in Iowa Code section 505B.1.

c. The commissioner, by order pursuant to this chapter, may approve a request for approval of a manner for delivering notices of cancellation, nonrenewal or termination by an electronic means if

the commissioner has jurisdiction to enforce the statute or rule requiring the notice and if the requested approval is consistent with Iowa Code section 505B.1 and with this chapter.

d. In response to a petition submitted pursuant to rule 191—4.22(17A) and related statutes and rules, the commissioner may issue an order approving an insurer’s proposed manner for delivering notices of cancellation, nonrenewal or termination by an electronic means rather than mail, if the commissioner finds, based on clear and convincing evidence, all of the following:

(1) The proposed manner allows the commissioner, the insurer and the intended recipient to verify receipt by the intended recipient;

(2) The proposed manner provides for consent, by the intended recipient, to have notices or documents delivered by electronic means, in compliance with Iowa Code chapter 505B; and

(3) The proposed manner provides that the insurance company shall maintain adequate records of notices, receipts and consents. The records shall be available for review upon request by the commissioner and the intended recipient and be shall maintained for a period of five years from the date of cancellation, nonrenewal or termination.

e. Such an order would constitute approval by the commissioner to satisfy Iowa Code chapter 505B.

f. Although any proposed manner that complies with the above requirements may be approved, the following system is provided as an example, for purposes of guidance, of an insurer’s system of verifiable receipt that will be approved by the commissioner if the system includes all of the following aspects:

(1) The system provides that the intended recipients shall give written consent to the insurer of delivery of required notices of cancellation, nonrenewal and termination by electronic means, in compliance with Iowa Code section 505B.1.

(2) The system provides that when an insurer is required to provide notices of cancellation, nonrenewal and termination, the insurer shall provide to the intended recipients a link to the required notice by electronic mail.

(3) The system provides that the insurer provide intended recipients with user names and passwords to log in to the insurer’s notice system website.

(4) The system provides that the link required by subparagraph 4.21(4) “f”(2) shall be to a secure website that requires the intended recipients’ user names and passwords for the intended recipients to access the insurer’s notice system website and the contents of the notices.

(5) The system provides that when the intended recipients log in to the insurer’s notice system website, either the insurer’s notice to the intended recipients or the intended recipients’ online inboxes will be the first thing automatically displayed.

(6) The system provides a procedure whereby, if the intended recipients do not log in to the intended recipients’ accounts within seven days after the insurer sent the link to the intended recipients by email, the insurer shall mail paper copies of the notices to the intended recipients’ last-known physical addresses.

(7) The system provides for adequate maintenance of records by the insurer as required by subparagraph 4.21(4) “d”(3).

g. The commissioner may, upon proper request by an insurance company pursuant to rule 191—2.6(17A,22) or another applicable rule, maintain the confidentiality of information in any document or materials submitted in support of a request for approval under this rule:

(1) If release of the specific information would disclose trade secrets protected by law pursuant to Iowa Code section 22.7(3) and 191—subrule 2.12(12); or

(2) If the specific information otherwise must be withheld from public inspection pursuant to Iowa Code chapter 22 or rule 191—2.12(17A,22).

191—4.22(17A) Petition for waiver. A petition for a waiver must be submitted in writing to the division as follows:

4.22(1) Applications. If the petition relates to an application or license, the petition must be made in accordance with the filing requirements for the application or license in question.

4.22(2) Contested cases. If the petition relates to a pending contested case, the petition must be filed in the contested case proceeding, using the caption of the contested case. The waiver petition shall be decided within the context of the contested case unless the presiding officer, other than the commissioner, determines that the petition should be referred directly to the commissioner.

4.22(3) Other. If the petition does not relate to an application or a pending contested case, the petition must be submitted to the division at the address in rule 191—1.4(502,505) or as instructed on the division's website.

4.22(4) Content of petition. A petition for waiver must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA INSURANCE COMMISSIONER		
In the matter of: (Name of Person Requesting Waiver or Variance)	}	REQUEST FOR WAIVER OF RULE (Specify number of rule for which waiver is requested)

4.22(5) The petition shall provide the following information in separate numbered paragraphs:

1. The name, address and telephone number of the entity or person for whom a waiver is being requested, and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the criteria described in subrule 4.21(3). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes justify a waiver.
5. A history of any prior contacts between the division and the petitioner relating to the regulated activity, application or license affected by the proposed waiver, including a description of each affected license held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the prior five years and any waivers or waiver applications filed by the petitioner with the division within the prior five years.
6. Any information known to the petitioner regarding the division's treatment of similar cases.
7. The name, address and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.
8. The name, address and telephone number of any entity or person who would be adversely affected by the granting of a waiver.
9. The name, address and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the division with information relevant to the waiver.

4.22(6) Notice. The division must acknowledge a petition upon receipt. The division must ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the division may give notice to other persons. To accomplish this notice provision, the division may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the division attesting that notice has been provided.

191—4.23(17A) Waiver hearing procedures and ruling.

4.23(1) *Procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the division so provides by rule or order or is required to do so by statute.

4.23(2) Additional information. Prior to issuing an order granting or denying a waiver, the division may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the division.

4.23(3) Division discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the division, upon consideration of all relevant factors. Each petition for a waiver must be evaluated by the division based on the unique, individual circumstances set out in the petition.

4.23(4) Ruling. An order granting or denying a waiver must be in writing and must contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

4.23(5) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion to grant a waiver from a division rule.

4.23(6) Narrowly tailored exception. A waiver, if granted, must provide the narrowest exception possible to the provisions of a rule.

4.23(7) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the division must balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

4.23(8) Conditions. The division may place any condition on a waiver that the division finds desirable to protect the public health, safety, and welfare.

4.23(9) Time period of waiver. A waiver must not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the division, a waiver may be renewed if the division finds that grounds for a waiver continue to exist.

4.23(10) Time for ruling. The division must grant or deny a petition for a waiver as soon as practicable but, in any event, must do so within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the division must grant or deny the petition no later than the time at which the final decision in that contested case is issued.

4.23(11) When deemed denied. Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division. However, the division shall remain responsible for issuing an order denying a waiver.

4.23(12) Service of order. Within seven days of its issuance, any order issued under this chapter must be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

4.23(13) Cancellation of a waiver. A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, modified or revoked if, after appropriate notice and hearing, the division issues an order finding any of the following:

- a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
- b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
- c. The subject of the waiver order has failed to comply with all conditions contained in the order; or
- d. The waiver is contrary to the public health, safety and welfare in light of newly discovered evidence or changed circumstances.

4.23(14) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter

who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

The rules in this division are intended to implement Iowa Code section 17A.9A and Executive Order Number 11 (September 14, 1999).

191—4.24 to 4.36 Reserved.

DIVISION III
DECLARATORY ORDERS

191—4.37(17A) Petition for declaratory order.

4.37(1) Any person or agency may file a petition with the division for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the division.

4.37(2) The petition must be submitted to the division at the address provided in rule 191—1.4(502,505) or as instructed on the division’s website.

4.37(3) The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA INSURANCE COMMISSIONER		
<div style="border-bottom: 1px solid black; margin-bottom: 5px;">Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).</div>	}	<div style="border-bottom: 1px solid black; margin-bottom: 5px;">PETITION FOR DECLARATORY ORDER</div>

4.37(4) The petition for declaratory order must provide the following information in separate numbered paragraphs:

1. The petitioner’s name, address, and telephone number.
2. The citation to and the exact words, passages, sentences or paragraphs of the statute, rule, or order that is the subject of the petition.
3. A clear and concise statement of all relevant facts upon which the declaratory order is requested.
4. The questions the petitioner wants answered, stated clearly and concisely.
5. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
6. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
7. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
8. Any request by the petitioner for a meeting provided for by rule 191—4.43(17A).

4.37(5) The petition for declaratory order must be dated and signed by the petitioner or the petitioner’s representative.

4.37(6) If applicable, the petition must also include the name, mailing address, and telephone number of the petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

4.37(7) A petition is deemed filed when it is received by the division. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose.

191—4.38(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the division must give notice of the petition to all persons not served by the petitioner pursuant to rule 191—4.42(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons deemed appropriate.

191—4.39(17A) Intervention. A person may file a petition for intervention at any time prior to issuance of an order and may be allowed to intervene in a proceeding for a declaratory order at the discretion of the division.

191—4.40(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

191—4.41(17A) Inquiries. Inquiries concerning the status of a declaratory proceeding may be made to the division at the address disclosed in rule 191—1.4(502,505).

191—4.42(17A) Service and filing of petitions and other papers.

4.42(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

4.42(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the division at the address disclosed in rule 191—1.4(502,505). All petitions, briefs, or other papers required to be served upon a party shall be filed simultaneously with the division.

4.42(3) *Method of service, time of filing, proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 191—3.12(17A).

191—4.43(17A) Consideration. Upon request by the petitioner, the division must schedule an informal meeting between the original petitioner, all intervenors, and the commissioner, or a member of the commissioner's staff, to discuss the questions raised.

191—4.44(17A) Action on petition.

4.44(1) Within the time allowed by Iowa Code section 17A.9(5), after receiving a petition for a declaratory order, the division shall take action on the petition as required by Iowa Code section 17A.9(5).

4.44(2) The date of issuance of an order is as defined in rule 191—3.2(17A).

191—4.45(17A) Refusal to issue order.

4.45(1) The division shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for any of the following reasons:

- a.* The petition does not substantially comply with the required form.
- b.* The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by failure of the division to issue an order.
- c.* The division does not have jurisdiction over the questions presented in the petition.
- d.* The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
- e.* The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f.* The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g.* There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
- h.* The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a division decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

j. The petition requests the division to determine whether a statute is unconstitutional on its face.

4.45(2) A refusal by the division to issue a declaratory order must indicate the specific grounds for refusal and constitutes final agency action on the petition.

4.45(3) Refusal to issue a declaratory order pursuant to this rule does not preclude a petitioner from filing a new petition that seeks to eliminate the grounds for refusal to issue a ruling.

191—4.46(17A) Contents of declaratory order—effective date.

4.46(1) In addition to the order itself, a declaratory order must contain the date of its issuance, the name of the petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

4.46(2) A declaratory order is effective on the date of issuance.

191—4.47(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order must be mailed or emailed by the division promptly to the original petitioner and all intervenors.

191—4.48(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the division, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the division. Issuance of a declaratory order constitutes final agency action on the petition.

The rules in this division are intended to implement Iowa Code section 17A.9.

ITEM 6. Amend subrule 10.18(6) as follows:

10.18(6) Business name. A business entity licensed under this rule must keep the division informed of its business name. If a business entity changes the name under which it is operating, notification from the designated responsible producer must be submitted to the division within 30 days of the name change. The notification may be sent by electronic mail to producer.licensing@iid.state.ia.us, or through the NIPR Gateway, if available, or as instructed on the division's website.

ITEM 7. Amend paragraph **36.20(3)“f”** as follows:

f. The notice shall state the following:

NOTICE OF PROPOSED PREMIUM INCREASE

Dear [INSURED]

[CARRIER] has asked the Iowa Insurance Division to approve an increase in premium rates of approximately []% with a proposed effective date of [DATE].

For your policy, the increase is anticipated to be as follows:

[CURRENT MONTHLY RATE] + [PROPOSED INCREASE] = [PROPOSED MONTHLY RATE]

Your actual premium increase may be less or greater than the proposed average premium increase due to a variety of factors that are independent of the proposed premium rate increase, including but not limited to age, geographic area, and plan design. In addition, the final rate you receive may be different than that listed above due to changes in those factors while the rate is pending approval or due to input from the Iowa Insurance Commissioner.

[RANKING AND QUANTIFICATION OF THOSE FACTORS THAT ARE RESPONSIBLE FOR THE AMOUNT OF THE RATE INCREASE PROPOSED]

A public hearing will be held at [TIME], [DATE], at [LOCATION] before the Iowa Insurance Commissioner to receive comments from [CARRIER] and the Iowa Insurance Consumer Advocate on the proposed rate increase.

You may contact the Consumer Advocate for assistance or to comment on the proposed premium rate at:

Iowa Insurance Division Consumer Advocate
Iowa Insurance Division
Two Ruan Center
~~330 Maple Street~~ 601 Locust Street, Fourth Floor
Des Moines, Iowa ~~50319~~ 50309
Telephone: (515)281-5705
Iowa-toll free: 1-877-955-1212
Fax: (515)281-3059
E-mail: ~~insuranceeca@iid.iowa.gov~~ consumer.advocate@iid.iowa.gov

All comments received will be considered public records. The Consumer Advocate will post comments received on the ~~Consumer Advocate's Internet Web site (http://iainsuranceeca.wordpress.com/)~~, which is also accessible through the Insurance Division's Internet Web site (www.iid.state.ia.us), division's website at www.iid.iowa.gov, and the Consumer Advocate will present the comments at the public hearing.

ITEM 8. Amend paragraph **36.20(4)“b”** as follows:

b. The consumer advocate shall post without delay all comments received on the ~~consumer advocate's Internet website (iainsuranceeca.wordpress.com/)~~, which is also accessible through the division's Internet website (www.iid.state.ia.us).

ITEM 9. Amend subrule 39.53(3) as follows:

39.53(3) Procedures to ensure that the insured is notified in writing of the insured's right to object to the independent review entity selected by the insurer or to the licensed health care professional designated by the independent review entity to conduct the review by filing a notice of objection, along with the reasons for the objection, with the commissioner at the Iowa Insurance Division, ~~330 Maple Street, Des Moines, Iowa 50319~~ Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309, within ten days of the receipt of a notice from the independent review entity.

ITEM 10. Amend rule 191—39.55(514G) as follows:

191—39.55(514G) Insurance division Division application and reports. The independent review entity shall provide the commissioner such data, information, and reports as the commissioner determines necessary to evaluate the independent review process established under Iowa Code chapter 514G as ~~amended by 2008 Iowa Acts, House File 2694~~. An application for certification as an independent review entity must be submitted in duplicate to the Iowa Insurance Division, ~~330 Maple Street, Des Moines, Iowa 50319~~ Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309. An application must be submitted in full to be considered. Every applicant will be notified of the certification decision. A list of certified independent review entities shall be maintained at the ~~insurance~~ division and shall be available through the division's website, www.iid.state.ia.us.

ITEM 11. Amend paragraph **41.9(2)“g”** as follows:

g. State that the enrollee may request such hearing by forwarding one copy of the notice of cancellation, marked to request a hearing, to the Commissioner of Insurance, ~~330 E. Maple Street, Des Moines, Iowa 50319~~ Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309.

ITEM 12. Amend subrule 55.9(4) as follows:

55.9(4) Change in name, address or state of residence.

a. *Name change.* If a licensed public adjuster's name is changed, the licensed public adjuster must file notification with the division within 30 days of the name change. Notification may be filed ~~via electronic mail to producer.licensing@iid.state.ia.us, or through the NIPR Gateway, if available, or as instructed on the division's website.~~ The notification must include the licensed public adjuster's:

(1) to (3) No change.

b. Address change. If a licensed public adjuster's address is changed, including an ~~E-mail~~ email address, the licensed public adjuster must file notification with the division within 30 days of the address change. Notification may be filed ~~via electronic mail to producer.licensing@iid.state.ia.us,~~ or through the NIPR Gateway, if available, or as instructed on the division's website. The notification must include the licensed public adjuster's:

(1) to (4) No change.

c. No change.

ITEM 13. Amend subrule 58.12(1) as follows:

58.12(1) A third-party administrator shall notify the commissioner within 30 days of any change in the information required to be filed under these rules including, but not limited to, a change of original application content. Reports of changes shall be filed electronically at ~~tparegistration@iid.iowa.gov~~ as instructed on the division's website. Failure to timely file changes is grounds for suspension of a certificate of registration and imposition of a \$100 civil penalty.

ITEM 14. Amend **191—Chapter 76, Appendix B**, section 2, paragraph 1, as follows:

1. This External Review Request Form, signed and dated, with the sections completed for your particular situation as described in Section 1. If you would like help completing your external review request for submission, contact the ~~Consumer Assistance Program~~ Market Regulation Bureau of the Iowa Insurance Division by calling ~~877-955-1212~~ 515-281-6348, or by e-mail at ~~http://insuranceca.iowa.gov~~ iid.marketregulation@iid.iowa.gov.

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